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FILED

MAR 2 2013

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

FILED

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CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO HEADQUARTERS

18 UNITED STATES OF AMERICA *ex rel.* PROTRANSPORT-1, LLC) Case No. C 12-3896 LB
19 and STATE OF CALIFORNIA *ex rel.*, PROTRANSPORT-1, LLC) UNITED STATES' AND STATE OF
20) CALIFORNIA'S NOTICE OF ELECTION
21) TO DECLINE INTERVENTION;
22) [PROPOSED] ORDER TO UNSEAL
23) AMENDED
24) Plaintiffs,
25) v.
26 KAISER FOUNDATION HEALTH)
27 PLAN, INC., a corporation)
28) Defendant.

)

UNITED STATES' AND STATE OF
CALIFORNIA'S NOTICE OF ELECTION
TO DECLINE INTERVENTION;
[PROPOSED] ORDER TO UNSEAL

FILED UNDER SEAL

JOINT NOTICE TO DECLINE INTERVENTION

A. The United States

Pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).

Therefore, the United States requests that, should either the relators or the defendants propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States; the United States also requests that orders issued by the Court be sent to counsel for the United States. The United States reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the relator's action or claim. The United States also requests that it be served with all notices of appeal.

B. The State of California

The State of California ("California") hereby notifies the Court that California declines to proceed with the above referenced civil action alleging violations by Kaiser Foundation Health Plan of the California False Claims Act and related causes of action. Cal. Gov't Code § 12652(c)(6)(B). If California's interests fail to be adequately represented by the relator plaintiff, California reserves its right to file an application to intervene in this action. Cal.

1 Gov't Code § 12652(f)(2)(A). If the parties attempt to dismiss, settle, or otherwise discontinue
2 the action, California requests that the Court provide California with notice and an opportunity to
3 be heard prior to the Court's ruling or granting of its approval. Cal. Gov't Code §§ 12652(c)(1).
4 Additionally, California reserves its right to request copies of all pleadings filed with the court
5 and copies of all deposition transcripts taken in this case. Cal. Gov't Code § 12652(f)(1).

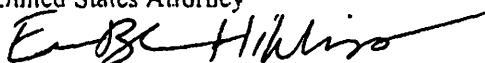
6 **C. Unsealing Request**

7 Finally, the United States and California request that the Court unseal: (1) Relator's
8 Complaint; (2) the summons; (3) the scheduling order; (4) this Notice of Election to Decline
9 Intervention, with (Proposed) Order to Unseal; and (5) all other matters occurring in this action
10 after the date the Court enters the unsealing order. The United States and California request that
11 all other contents of the Court's file in this matter (including, but not limited to, any applications
12 filed by the United States and/or California for extensions of the sixty-day investigative period,
13 any applications for partial lifting of the seal, and any orders previously entered in this matter)
14 remain under seal and not be made public or served upon Defendant.

15
16 Respectfully submitted,

17
18 STUART F. DELERY
19 Principal Deputy Assistant Attorney General

20 MELINDA HAAG
21 United States Attorney

22 Dated: March 22, 2013 By: 
23 ERICA BLACHMAN HITCHINGS
24 Special Assistant United States Attorney

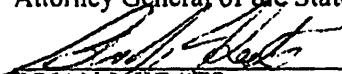
25 Dated: March 21, 2013 By: 
26 MICHAEL D. GRANSTON
27 SARA McLEAN
28 KIMBERLY I. FRIDAY
29 Civil Division, U.S. Department of Justice

Attorneys for the United States of America

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2 Dated: March 20 2013
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By:

KAMALA HARRIS
Attorney General of the State of California


BRIAN J. KEATS
Deputy Attorney General
Attorneys for the State of California

~~PROPOSED~~ ORDER

The United States and the State of California having declined to intervene in this action pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), and the California False Claims Act, Cal. Gov't. Code § 12652(c)(6)(B), respectively, the Court rules as follows:

IT IS HEREBY ORDERED that,

1. All current contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendants, except for (1) Relator's Complaint; (2) the summons; (3) the scheduling order; and (4) this Notice of Election to Decline Intervention, with (Proposed) Order to Unseal, which are hereby unsealed.
2. The relator shall serve the Complaint upon the defendant.
3. The relator shall serve this Order and the accompanying Joint Notice of Election to Decline Intervention upon the defendant after service of the Complaint.
4. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.
5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3), and upon California. The United States and California may order any deposition transcripts and are entitled to intervene in this action, for good cause, at any time.
6. The parties shall serve all notices of appeal upon the United States and California.
7. All orders of this Court shall be sent to the United States and California.
8. Should the relator or the defendant(s) propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States and California with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated:

~~APR 2 2013~~
~~MAR 2 2013~~


LAUREL BEELER
United States Magistrate Judge

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United
3 States Attorney for the Northern District of California and is a person of such age and discretion
4 to be competent to serve papers. The undersigned further certifies that she is causing a copy of
5 the following:

6 **UNITED STATES' AND STATE OF CALIFORNIA'S NOTICE OF ELECTION TO
7 DECLINE INTERVENTION; [PROPOSED] ORDER TO UNSEAL**

8 to be served this date upon the persons indicated below at the addresses shown:

9 Brian J. Keats, Esq.
10 Bureau of Medi-Cal Fraud and Elder Abuse, DOJ
11 1425 River Park Drive, Suite 300
12 Sacramento, CA 95815

13 George S. Azadian, Esq.
14 2596 Mission Street, Suite 204
15 San Marino, CA 91108

16 _____
17 ✓ **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope
18 with postage thereon fully prepaid in the designated area for outgoing U.S. mail in
19 accordance with this office's practice.

20 _____
21 **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully
22 prepaid in the designated area for outgoing U.S. mail in accordance with this
23 office's practice.

24 _____
25 **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be
26 delivered by hand to the person or offices of each addressee above.

27 _____
28 **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to
the person or offices of each addressee above.

BY E-MAIL: I caused each such document to be sent by e-mail to the person or
offices of each address above.

BY FEDERAL EXPRESS

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed March 21, 2013 at San Francisco, California.

25 _____
26 _____
27 _____
28 _____


Jessica Meegan
Legal Assistant

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case Number: CV12-03896 LB

Plaintiff,

CERTIFICATE OF SERVICE

v.

KAISER FOUNDATION HEALTH PLAN,
INC.,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 2, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Erica Blachman Hitchings
Special Assistant United States Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102

Michael D. Granston
Sara McLean
Kimberly I. Friday
Attorneys - Civil Division
United States Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044

(Counsel directed to serve the appropriate parties.)

Dated: April 2, 2013

Lashanda Scott
Richard W. Wierking, Clerk
By: Lashanda Scott, Deputy Clerk